

# International Business Review

## UK corporate structure - limited liability partnership

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Once the decision has been made to establish a presence in the UK, business owners must decide upon the most suitable structure for their UK entity. There are many different corporate structures available in the UK, for example, an establishment, limited company or limited liability partnership.

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Careful consideration should be undertaken to determine which structure is most suitable for the type of operations that the business will undertake. In this article we look at limited liability partnerships (LLP), specifically covering the set-up process for this form of entity, and the benefits of using this structure.

An LLP is a separate legal entity for legal purposes, but wholly tax transparent. It shares many of the features of a normal partnership, but offers its members limited liability for business debts and liability. Unlike members of ordinary partnerships, the LLP itself is responsible for any debts that it incurs, not the individual members. This makes an LLP very similar to a limited company.

We set out below some of the issues you should consider before deciding whether an LLP is the appropriate business structure for your UK entity.

### Benefits of an LLP

#### Limited liability

An LLP provides limited liability for its members in broadly the same way that a limited company provides limited liability for its shareholders.

#### Taxation

LLPs are transparent for UK tax purposes, so the members themselves are liable to tax on the underlying profits of the

LLP. There is no double layer of taxation as would be the case with a company. Since individual members are taxed directly on the profits of the LLP, a disposal of a capital asset by the LLP which gives rise to a gain will be taxed on the individual members and will therefore be subject to the flat capital gains tax rate of 18%. A corporate member of an LLP would be subject to corporation tax on its share of the LLP's income or gains.

#### Employee benefits

LLPs are extremely flexible and can be used to provide equity interest to key individuals without the need for share schemes.

Individuals that are members of LLPs are not employees but are self-employed, so no employer's National Insurance Contributions (NIC) are payable by the LLP on their drawings.

#### Disadvantages of an LLP

##### Taxation

All profits are taxed immediately in the hands of the members – there is no concept of retained reserves in an LLP.

Depending on the individual member's tax position, their rate of tax may be higher than the rate of corporation tax that would apply if a limited company structure was used and the limited company retained its profits rather than distributing them to shareholders.

### Non-UK resident members

If the members are not UK resident, having an LLP may result in those members having to file UK tax returns.

### Set up procedure

An LLP is incorporated in much the same way as a limited company and will be required to register at Companies House.

An LLP is governed by its Partnership Agreement which sets out the way in which it is run. The Partnership Agreement is extremely flexible and will usually set out how profits and losses are to be shared between the members. There can be different profit sharing arrangements for income profits as opposed to capital profits and these need not correspond to the capital contributions of the individual partners.

### Filing requirements

- LLPs have to file a Partnership Self Assessment tax return each year. The LLP itself has no tax liability but the tax return will show the allocation of profits and losses to the different members. The members will include the allocation in their personal tax returns.
- LLPs are also required to prepare statutory accounts each year (audited if sufficiently large) and file these at Companies House.
- If registered for VAT, an LLP will be required to file VAT returns.
- If the LLP has employees, it will need to file the usual payroll returns.

### LLP versus limited company or taxable establishment Taxation

The major tax advantage of an LLP is that there is no double layer of taxation as there will be with a limited company or taxable establishment, since all the profits are taxed only in the hands of the members themselves. In a limited company, corporation tax would be paid by the company and then the shareholders would pay tax when they received the post-tax profits by way of dividend.

### Profit

LLPs are more flexible than limited companies in the way profits are shared, doing away with the need for share incentive schemes.

### Liability

LLPs provide broadly the same limited liability protection as limited companies.

### Continuance

LLPs are seen as more permanent entities than establishments, and are viewed as being similar to limited companies – they have substance.

### Conclusion

There is no universal reason for preferring one entity to another. Each case must be considered individually, although the decision usually focuses on what is most tax efficient for a business, or is most commercially acceptable. These issues can be complex and professional advice should be sought to ensure that the most appropriate structure is chosen.

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